THE NEW-YORK

CITY-HALL RECORDER.

VOL. V. *July*, 1820. NO. 7

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday*, the 3d day of *July*, in the year of our Lord, one thousand eight hundred and twenty—

PRESENT,

The Honourable
PETER A. JAY,
Recorder of the City.
STEPHEN ALLEN, and } *Aldermen.*
GEORGE B. THORP, }
P. C. VAN WYCK, *Dist. Att.*
JOHN W. WYMAN, *Clerk.*

(CUNNING ARTIFICE TO STEAL.)

WILLIAM COOK, JOSIAH HAGAR, AND JOHN B. SMITH'S CASE.

VAN WYCK, *Counsel for the prosecution.*
PRICE & RODMAN, *Counsel for Cook and Hagar.*
SCOTT, *Counsel for Smith.*

Quere: Whether, on a motion in arrest of judgment, an indictment for grand larceny against three persons, containing a count against a fourth, for receiving the same goods, mentioned in the counts for grand larceny, knowing them to have been stolen, is good after verdict against the three, the fourth not having been tried.

The most experienced and consummate villains, who devise and execute the most cunning schemes, (it is wisely ordered) are destitute of common prudence.

So far as this case has progressed, no point of importance has been decided; but the facts are interesting, and may be useful to foreigners, who may come to this country with any considerable money.

The prisoners were indicted for grand larceny, in stealing a quantity of gold, in American, English, French, and German coin, some of which was particularly specified in the indictment, to the amount of $1560, the money of Justus Spurtzell, on the 1st day of July instant. There was also a count in the same indictment, against one Elizabeth Kirk, for receiving the same money, knowing it to be stolen, against the form of the statute, &c.

It appeared, from the testimony of the prosecutor, that he recently arrived in this city, a stranger, from Germany, and put up at the house of Reuben Decker, who keeps a tavern and boarding house, at number 4 Front-street. The witness had a black trunk, containing the gold coin, specified in the indictment, and his clothes; and he left this trunk in charge of the landlord, who put it into his bed-room, in the second story. At five o'clock, in the afternoon, the witness, in presence of Cook and Hagar, counted this money, and found it was all there.

Cook and Hagar were boarders in the same house, and Hagar's bed-room was a room in the third story, the door of which was within but a few feet of the witness' bed-room door.

Cook had often inquired of him what he intended to do with the money, and on being told by the witness, that he calculated to purchase a place, Cook represented that he had five hundred acres of land a short distance back of Albany, near the glass factory.

In the evening there was a player on bagpipes, who had been procured by Cook, for that purpose. He made a great noise: many people collected: the witness treated, and was treated by the prisoners; and at about eleven, he asked Hagar to go to bed, who went, and on going into the room of Hagar, and just in the door, the witness found the black trunk rifled of its contents, and his clothes scattered round the floor.

Richard Merian, a very intelligent man, though in a humble sphere of life, on being sworn, as a witness on behalf of the prosecution, testified that he came from Albany, in the sloop Hardware, Capt. Cropton, for the purpose of getting into business as a grocer, in this city. The witness knew Smith, one of the prisoners, and one Holden in that

place. Smith owed the witness money; and he ascertained where Smith lived, and, on Tuesday, before the trunk was broken open, went to his house in Bancker-street, and related to him the object of coming to the city. Smith told him that Pomeroy wanted to sell out; and, the next day, they went together to his house, at the corner of Spruce and William street. The witness inquired of Smith, where Holden was, and he said that he had gone with Cook to Baltimore. On Friday, the day preceding the robbery, the witness saw Cook, Hagar, and Smith, at Pomeroy's, where they used to meet. On the same day, and at the same place, Smith had a conversation with the witness alone: when Smith, who had about $20 in money, with him, boasted that he should soon be flush in cash: he should have a load. He said there was a fellow boarded with Cook and Hagar, who had a thousand or two dollars, and Cook knew its situation: that Holden, knowing where the room was, and the situation of the door, was to get the money.

On Saturday, in the day time, the witness saw Cook, Hagar, Smith, and Holden, at Pomeroy's; and at about seven in the evening, they went away, and the witness went down to see whether the sloop, on board of which was his trunk, was at the wharf. He asked an acquaintance, from Albany, to take a walk, and, on their return, while the witness was sitting on the deck of the sloop Hardware, at about nine o'clock. Cook came on board, ran across the deck, and called on Sandy, a Scotchman, who played on bagpipes, and was on board a sloop lying next the Hardware. Sandy said he could not go, as the captain of the sloop wanted him to play for some young ladies. The witness asked Cook what he wanted of the bagpipes, who replied, that he wanted Sandy to play for a company. Cook then touched the witness, and requested him to step ashore. The witness did so, when Cook said, in effect, "You are a stranger to me; but Smith says he is acquainted with you, and has apprized you of our plan. There is a Dutchman, who has much money, and I have seen it this day. We want Sandy to make all the noise he can, while Smith and Holden get the money." The witness here stated, that he then understood that Smith was to aid Holden, who was to get the money, as he knew where it was. Cook further stated to the witness, that Hagar and himself were to stay below, while the bagpipes were played, and keep the company in tow. The whole were then to meet at Smith's house, if they got the money. "And," (continued the witness) "they did go there, for I saw the money counted out."

Sandy did not go at that time. The witness asked Cook where he boarded, who directed him to come on, and keep behind him; and he then conducted the witness to Decker's, where he found Hagar. The witness, on his way back to the sloop, saw Smith and Holden, dressed differently from what they were before. The witness went on board the sloop, but was determined to watch their movements: for it seemed strange to him, how they were to get this money, while so many people were up. He went up, and passed the house, and heard the bagpipes playing. On his way, he saw Cook, going from Decker's, turning a corner, and walking very fast. The witness followed him, and he went to a house which was fastened. There he called Holden; and some one looked out. Cook cried out, "D—n you, what are you about?" Smith, who was in the house, said that Holden had got the money, and had gone home with it; and Smith then came down. The witness, by the direction of Cook, then went with Smith to the house where Holden was, who said he had the money, and showed it. It was all rolled up in papers, which they pulled off. The witness went out, and came back, when he found Smith, Holden, and Mrs. Kirk, counting the money in a bed-room. They counted out, as they said, three hundred and thirty odd pieces of gold, which they tied up in a handkerchief. When it was asked what was to be done with the money, Mrs. Kirk said, she would plant it; but Holden said, that he would put it under his pillow. They were very anxious that the witness should stay all night; but he told them he could not

and finally went down to the sloop. On going on board, he tried to awake one Cheney, the cook, for the purpose of disclosing to him the matters he had witnessed, in relation to the theft; but Cheney was so sound asleep, that he could not easily be awakened, and the witness went to bed, determined to inform him in the morning. When the witness arose, he went on deck, and understood that Capt. Cropton had been sent for to go up to the police, on account of a robbery. The witness then went into the state-room, and related the whole affair to Cheney, who proposed to go up to the police. Before they started, the captain returned, to whom Cheney disclosed the facts; and the captain then proposed to go to Decker's. They went there, but could not find him; and the captain and witness then went to the police, and found the magistrates absent. It was between five and six in the morning. At a porter house, near Tammany-Hall, they were referred to Col. Warner's, where they went; and, after he had dressed himself, he was informed of the urgent nature of the business; and the witness told him the place where the money was, and that then the men and money might be found.

Col. Warner immediately procured Hays and Dusenberry, and went, with the witness, to Smith's house. The officers kept back, while the witness went in, and found Mrs. Kirk, who said that some people had been there about the money, and Smith would be taken; but the money was safe, as it was planted. She said she suspected the witness, because he would not stay the preceding night. The officers came in, and on searching, found the money.

In a critical cross examination, conducted, principally, by Price, the witness answered promptly; and through the whole, avoided even the appearance of contradiction or inconsistency. It does, indeed, seem very extraordinary, that he should have been so easily admitted a confident in this nefarious scheme, without any adequate motive. His aid was not wanted; though he knew Smith, he was but slightly acquainted with Holden, and a stranger to the other prisoners; and for what purpose was the plan developed to him? But, in our search for motives of action among such men, at every step, we are involved in difficulty. The same prudence and foresight, which we deem essential, even in conducting the ordinary concerns of life, and much more so, a scheme fraught with hazard, seem to be overlooked and disregarded, by men of the character under consideration; as if Providence, in his goodness, had resolved to frustrate villany, and "to bring to naught the counsels of the wicked."

It appeared, principally from the cross examination of Merian, that he was twenty-five years of age, had been a grocer in Albany; knew Smith, and had a slight acquaintance with Holden; but did not know Cook nor Hagar.

The witness thought, when Smith told him, that he should soon be flush with money, that he intended to rob the man, and remonstrated with him; and the reason the witness did not disclose his knowledge of the scheme, before or during the evening the robbery was committed, was, that he thought if he kept it still until the next morning, all the prisoners might be taken, and the money recovered; as they told him they were all to stay at Smith's that night. The witness was a stranger in the city; and thought, that if he made the alarm at Decker's, before the scheme had been effected, that the prisoners would have said it was all false, and no good purpose would have been answered; but from the commencement, he was determined to bring them out; and, for that purpose, deemed it the most prudent course, to pretend to enter heartily into their plan.

Reuben Decker, on being sworn, stated, that Cook, and one Adams, came from Albany, in the Hardware, and took board with the witness, alleging they brought goods with them. Cook got Hagar to board with the witness, and became answerable for his board. They both made preparations for going away, on Saturday, the day laid in the indictment; and, a short time before this, Hagar paid three week's board, ending on Monday, the 3d day of July. On Saturday, they both pretended sickness; but, in the afternoon, Cook said he was

going to get the bagpipes. The witness told him it was not best; but he said that he wanted a *tid re l*, as he was going to Boston, and that he would rather give $20, than not have the bagpipes.

In the evening, Smith came swaggering in, dressed like a sailor, cursing and swearing. Cook asked him if he had any money, and seemed to behave to him strangely. While the bagpipes were played, about twenty or thirty boys and men collected, the women of the house danced, and Smith made a great noise. Hagar called for punch, which he had not done before, while in the house; but Cook called for more liquor than any of the rest; and Spurtzell was often treated, and, in his turn, treated the others. The prisoners, during the evening, often went out and returned, and the conduct of Smith, in that particular, was extraordinary: but the witness had merely a glimpse of Holden during the evening.

After the alarm was made by Spurtzell, the witness found that the doors leading to the bed-room where the trunk was, had been broken open, and a bed, which was before one of them, removed. His suspicions fell on Smith; for he had never been to the house before, to the knowledge of the witness. He attempted to take Smith to the watch house, who abused him. Hagar and Cook were taken to the watch house, by the witness, who requested them to inform him about Smith; but they declared they did not know him before that evening; and this made the witness suspect him more and more; but Cook and Hagar were not detained. The witness went to the police, and found out where Smith lived, and went to his house for him, and at length found him in a neighbouring porter house, but he denied that the witness had authority to take him, and went off.

It appeared, from the testimony of John S. Dusenberry, that Mrs. Kirk, whom the officers found in Smith's house, denied that there was any money in the house; and while Col. Warner and Hays were talking with her, Merian and the witness proceeded to search the house, and dig in the cellar, where Merian said it was; but a small parcel only was found, in an obscure corner, among some blacking bottles. They left the house, despairing to find more; but Merian being confident it was *planted* in the cellar, the witness returned with him, and, after digging some time, the remaining part of the gold, was found buried under a stone.

By Silas Parcell, and William Woods, the intimacy of Cook, Smith, and Hagar, down to the time the theft was committed, was proved.

Adeline Hankerson, on being sworn, stated, that she lived at Pomeroy's, where she heard Cook, Holden, and Smith, discoursing together, about getting the Dutchman's money; and after she was told about the robbery, and saw his distress, she mentioned to Smith that the poor man had been there crying about his loss, when Smith said, "D—n him, let him cry; I have got the money!"

Van Wyck read the examination of Hagar, which stated, that on Saturday Cook told him the manner in which the money might be obtained; and the examinant told him he would have nothing to do with it; and Cook replied, that he was not half a man. The examination denied any concern in the theft.

The principal testimony, on behalf of the prisoners, was that of Noah Pomeroy, who stated, that he had been acquainted with the prisoners in Albany, where he formerly lived, and that ten years ago, Hagar was a deputy sheriff of Schoharie county.

Cross examined by Van Wyck: Q. Have you not seen Hagar, from day to day, in the state prison in this city?

The witness declined answering; and on an objection to the inquiry, it was overruled

Van Wyck offered to prove, by parol, that the witness and Hagar, had both been in the state prison; but the Recorder decided that, to prove this, it was necessary to produce the records of conviction.

John B. Roome, the keeper of that prison, however, testified, that while he knew Hagar, his character was that of a convict in the prison; and the character of Pomeroy was very bad.

The case was summed up by the respective counsel. Rodman contended that Smith and Decker were the thieves, and that his clients were innocent. The three counsel, however, concurred in this, that Merian was deeply concerned in the scheme, and that no reliance should be placed on his testimony.

Van Wyck, on the other hand, insisted that it was owing to the incorruptible integrity of Merian, that this scheme of villany was disclosed, and that his relation was entitled to full belief.

The Recorder charged the jury, that there could be no doubt of the guilt of Smith. With regard to Cook, he could not be convicted, unless the jury believed Merian: whether he was to be believed, was a question for the jury. As to Hagar, the circumstances were strong. These the Recorder adverted to, and left the case to the jury, who found the prisoners guilty.

On being brought to the bar for sentence, on the last day in term, their counsel moved in arrest of judgment, on the ground, that there was a count in the indictment, against Elizabeth Kirk, for receiving stolen money, knowing it to be stolen. This offence, the counsel contended, was a misdemeanor; and they produced authorities, to show that counts for a felony and misdemeanor, in the same indictment, are incompatible, and cannot be joined. 1 Starkie, p. 40. 1 Chitty, Crim. Plead. p. 210, 211.

Van Wyck, contra.

The court suspended the sentence.

Holden has been arrested in Albany, and brought to this city. His trial, and the result of the motion before the court, will be presented hereafter.

ASSAULT AND BATTERY—ACCIDENT.

MARTIN BURKE'S CASE.

J. D. Fay, *Counsel for the prosecution.*
Price & David Graham, *Counsel for the prisoner.*

One who in consequence of abusive language which he uses to another, in his own house, on being attacked by him, casts a glass tumbler in his face, and cuts out one of his eyes, cannot exonerate himself by alleging that the injury was the result of accident, and in self-defence.

The prisoner was indicted for an assault and battery, committed on John Cullen, on the 25th day of October last.

It appeared from the testimony of the prosecutor, that on the evening of the day last mentioned, the prisoner was in the store of the prosecutor, and made use of very abusive and degrading language towards him, and first called him a liar. The prosecutor told him to go out of the store, and struck him on his arm with an umbrella; upon which the prisoner struck down and extinguished the candle; and at the same instant suddenly cast a glass tumbler in the face of the prosecutor, and cut out one of his eyes. The injury was so severe, that for six weeks the prosecutor could not see with either of his eyes, and lost one of them entirely.

On the part of the prisoner, it was testified by *Michael Pendegrast*, (ante 3d vol. p. 11.) that the prosecutor called the prisoner a liar first, and then struck him on the head with an umbrella, before ordering him to leave the store.

Graham contended, in the first place, that the prisoner, in casting the glass, did not intend to cut out the prosecutor's eye. The offence consists in the *intent;* and should the jury believe that the particular injury was accidental, then, in the second place, they ought to acquit him, because he was acting in self-defence.

The Recorder charged the jury, that the only question in the case was, whether, when the prisoner threw the glass, he intended to injure the prosecutor. The intent is to be inferred from the act; and though it may be true, in point of fact, that the prisoner, when he threw the glass, did not intend to cut out the eye of the prosecutor, yet this furnishes no excuse: it is sufficient if the prisoner intended to do an injury. If assailed, he had no right to make use of more force than was necessary in repelling the attack.

The prisoner was convicted; and, on the last day in term, being poor, was fined but $25 and the costs.

(APPROVER—CONFESSION.)

SAMUEL McDOWELL and JAMES FARREL *al.* CARROL'S CASE.

VAN WYCK, *Counsel for the prosecution.*
RODMAN & DAVID GRAHAM, *Counsel for the prisoners.*

The testimony of an approver, if corroborated by the declarations of the prisoner, is entitled to belief.

Where several go to a place to steal, and one of them removes the goods to a convenient place for the other to carry off, where they remain some time, and are then carried off by the co-adjutor, he is guilty as a principal.

No bond of union can bind thieves to each other.

The prisoners were indicted for grand larceny, in stealing a quantity of jewellery, consisting of watches, diamond broaches, and other articles, amounting to $1,200, the property of James Black, on the 12th of May last.

It appeared that the prosecutor came from Philadelphia to the city, a stranger, and put up at the City Hotel, early in the evening. His trunk, containing the articles, was placed in a room in the second story, and before nine o'clock was stolen. A few days ago, from information derived from one Wm. Kelly, the prosecutor found, in the house of Farrel, at the corner of Pump and Orchard-street, a shirt, which, on being produced, he was confident was one which was in the trunk when it was stolen; but none of the jewellery had been found.

It appeared from the testimony of Kelly, sworn as an approver, that there was a public dinner at the city hotel, the 12th of May, and that the witness, in company with the prisoners, with whom he had been engaged in the business of stealing since he had been in this city, went there for the purpose of plunder. That the better to effect their object, the witness mixed with the servants, and pretended to assist them, and first stole a bundle of clothes, which the prisoners carried off, and returned, and the witness stole the trunk containing the jewellery, and placed it in the entry, convenient for them, and they carried it away.

In a short time there was an alarm made, and the witness was seized and carried to bridewell, where he remained until he was let out of prison by mistake of an officer. He was arrested again, and put in bridewell; and understanding the distress of the prosecutor for his loss, which the witness regretted, he sent for justice Christian, whom he requested to send for Black, as he thought he might be of service to him. This was done; and the disclosure took place which led to the apprehension of the other prisoners.

It appeared from his cross examination, that two years ago he first came to Philadelphia from Europe, and staid three months; then came to this city, where he staid five months. He then sailed to Savannah, thence to Liverpool, thence to New-Brunswick, thence to Boston, where he staid at Farrel's, and from thence sailed to this city, where he again met with Farrel, who led him into the wicked courses which had brought him into his present situation.

The material facts related by Kelly, were corroborated; and in the several examinations of the prisoners, they admitted they were at the City Hotel with him

The cause was summed up by the respective counsel; and it was made a point to the court and jury by Mr. Graham, that when Kelly stole the trunk and put it in the entry, the felony was consummated, and the prisoners ought to have been indicted for receiving the goods, knowing them to be stolen.

The Recorder, in his charge, instructed the jury, that if they believed that the prisoners went to the City Hotel, intending to steal, and took the trunk, after it had been put in a convenient place by Kelly, as related by him, they were guilty as principals. His honour left the credit to be attached to the testimony of Kelly, entirely to the jury, who convicted the prisoners; and on the last day in term, they were each sentenced to the state prison ten years. Kelly was convicted of another larceny, and was also sentenced. (See summary.)

(RIOT—RESCUE—ARREST BY MAGISTRATE ON VIEW.)

JOHN McKAY, PHILIP ROGERS, AND PATRICK McMANUS' CASE.

VAN WYCK, *Counsel for the prosecution.*
DR. GRAHAM, BOGARDUS, WILSON, DAVID GRAHAM & SCOTT, *Counsel for the defendants.*

A magistrate has a right, on his own view, and without a warrant, to arrest one or more, while engaged in committing a breach of the peace, but not after the affray has entirely subsided.

The defendants were indicted for a riot, and an assault and battery on Charles Christian, one of the police magistrates; and for rescuing a prisoner arrested by that magistrate, on the 4th day of July instant.

The prominent facts were, that McKay, having been insulted in the street, by two persons not named in the indictment, and being heated with liquor, stripped himself and pitched battle against them. He acted like a madman, knocked several persons down, and being of a stout athletic frame, few were willing to seize him. A mob collected; and he was hemmed round on all sides, by a ring of people, in the midst of whom he was walking round with uplifted hands, using threatening gestures, and complaining of his wrongs.

At this juncture, justice Christian arrived; and, demanding assistance from the citizens, seized McKay, but was interrupted by the other defendants, who rescued him several times; and Rogers threatened to put a bullet through the heart of Christian, who at length succeeded in quelling the riot, and bringing the offenders to the police.

The defence was rested principally on the ground, that at the point of time the magistate came up, the affray had ended, and he had no right to arrest McKay without legal process. In doing so, the magistrate himself was a rioter, and the other two defendants were justifiable in rescuing McKay.

The counsel, in support of this doctrine, cited the 11th John. p. 486, and 1 Chitty's Crim. Plead. p. 48, 80.

After the remarks of the respective counsel, the Recorder charged the jury, that the question whether Rogers and McManus were guilty of a rescue, depended on the question whether the arrest was legal. A magistrate, on his own view, and without a warrant, has a right to arrest one while engaged in committing a breach of the peace; but after it is over he has no such authority.

The Recorder left it as a question for the jury to determine, whether at the time the magistrate arrested McKay, the affray continued, or had subsided. If it continued, the defendants ought to be convicted; otherwise acquitted.

The jurors did not agree, and were discharged.

(ASSAULT.)

FAIRME'S CASE.

J. D. FAY, *Counsel for the prosecution.*
GARDENIER, *Counsel for the prisoner.*

To pursue a man with a dangerous weapon, coming so near him, as that danger to his person may be reasonably apprehended, is an assault.

The prisoner, a Spanish black, was indicted, for an assault on Thomas D. Coxsen.

It appeared, that the prisoner ran up stairs, armed himself with a fork, and taking it in a back handed manner, holding his arm across his breast, and the point of the fork presented, ready to strike a blow, advanced with a firm step towards the prosecutor, who retreated, but kept his eye on the prisoner; and before he approached near enough to make a pass to stab, which the prosecutor believed was designed, he suddenly cast a stone at him, and then leaped upon him, and disarmed him.

Gardenier contended, to the court and jury, that the prisoner could not be convicted, legally, because he was not, at any time, near enough to the prosecutor to inflict a blow. Advancing towards the prosecutor, with a fork, without offering to strike, was not an assault, but mere empty gasconade.

The Recorder charged the jury, that if they believed, from the facts, in this case, that the prisoner, armed in the manner related, advanced on the prosecutor, and came so near him, as that danger might reasonably be apprehended, he was guilty of an assault.

The jury convicted him, but recommended him to the mercy of the court; and he was sentenced thirty days to the penitentiary.

SUMMARY FOR JULY TERM.

FORGERY.

William Malloy, for passing and having in possession, with an intent to pass, a counterfeit bill, on the Phœnix bank, was tried and convicted, and sentenced to the state prison seven years.

GRAND LARCENY.

William Barnard, for stealing the goods of Philip Holmes, was convicted on confession, and sentenced to the state prison five years.

William Fairchild, for stealing the goods of Lemuel L. White, was convicted, on confession, and sentenced to the same place three years.

Lewis Tredwell, for stealing the goods of Abraham K. Fish, was tried and convicted, and sentenced to the state prison four years.

William Kelly, for stealing the goods of Connell Doughty, was tried and convicted, and sentenced three years to the state prison.

Louisa Morris, for stealing the goods of Benjamin Field, was tried and convicted, and sentenced to the state prison three years.

John Edwards was convicted, on confession, of this offence, and sentenced three years to the state prison.

PETIT LARCENY.

William Cannon, William *al.* George Thompson, Jacob Johnson, Peter O'Riley, Francis Johnson, Abraham Watson, Martha Erwin, Jane Tredwell, and Mary Kane *al.* Adeline Williams, were severally convicted of this offence, and the one first named was sentenced to the penitentiary three years; the two following, for two years each: the next for one year in bridewell; the next, the same time in the penitentiary; and the remainder for shorter periods.

SUPREME COURT of the State of New-York, holden at the City-Hall of the City of New-York, in the *May* term, 1820—

Before the Honourable
AMBROSE SPENCER, *Chief Justice.*
WILLIAM W. VAN NESS,
JONAS PLATT,
JOSEPH C. YATES, and
JOHN WOODWORTH, } *Justices.*

JAMES FAIRLIE, *Clerk,*

(REGULARITY OF MESNE PROCESS.)

ANDREW ALEXANDER, and others, *adsm.*
DANIEL WHITE, Assignee, &c.

EMMET & WELLS, *Counsel for defendants.*
OGDEN, *Counsel for the plaintiff.*

A *capias* against a prisoner on the limits, and his bail, tested at New-York, on the 15th of May, 1819, and returnable the first Monday of August then next, at Albany, was put into the hands of E. B. with express authority from the plaintiff's attorney, to alter the test and return, in case it should not be found necessary to deliver it to the sheriff before its return, and in case the prisoner should be found off the limits after its return. E. B., in pursuance of that authority, altered the writ, by testing it the 3d day of August, 1819, returnable the same day at Albany, and delivered it to the sheriff, who, on the same day, arrested the defendants: it was held that the process was regular.

On the last day of this term, Emmet and Wells, on an affidavit disclosing the facts in substance above stated, in relation to the alteration of the *capias*, moved to quash the writ, and set aside all subsequent proceedings, on the ground that the alteration of the writ was irregular.

Ogden read two several affidavits, disclosing the facts in relation to the authority given by the plaintiff's attorney to alter the capias, as above stated.

The question was well argued on both sides, and a number of authorities were read. The court, after mature deliberation, denied the motion, with costs.